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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER

TRUONG, LOAN

ART UNIT PAPER NUMBER

2114

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/737,374

Applicant(s)

HANSEN ET AL.

Examiner

LOAN TRUONG

Art Unit

2114

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 21-25 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

In regards to claims 21-25, applicants claim a computer product comprise of executable instructions is interpreted as a program, which does not fall within the statutory category for patentably and therefore is non-statutory. See MPEP § 2106. Examiner suggests that the computer product be embodied in a computer readable medium being executed by the server.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Chung et al. (US 6,195,760).

In regard to claim 1, Chung et al. disclosed a system for storing checkpoint state information, comprising:

a network interface to an external network (*network, fig. 1, 100, col. 3 lines 60-62*); and
a persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) coupled to the network interface (*connected to the network, fig. 1, 100, col. 4 lines 41-44*), wherein:

the persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) is configured to receive the checkpoint data (*periodically receives from each fault-protected application module running on the network the most current state of that application, col. 4 lines 41-44*) via a direct memory write command from a primary process (*hot backup where each copies of an application can process client request and states are synchronized among multiple copies, col. 2 lines 7-14*), and to provide access to the checkpoint data via a direct memory read command from a backup process (*last operating state provided to the backup, col. 4 lines 34-40*), through the network interface (*last stored state is retrieved from the memory of Checkpoint Server connected to network, fig. 1, 110, 100, col. 4 lines 41-48*)); and

the backup process provides recovery capability in the event of a failure of the primary process (*idle or backup application module assume the functioning of a failed primary application module upon failure-detection, col. 4 lines 34-40*).

In regard to claim 2, Chung et al. disclosed the system of claim 1, further comprising:

a persistent memory manager (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) configured to provide address context information to the network interface (*pathname location of*

each copy of the application module on the host computer, fig. 2, 200).

In regard to claim 3, Chung et al. disclosed the system of claim 1, wherein the persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) is configured to transmit the checkpoint data to another processor (*Checkpoint server transmit last stored state to new primary application module, fig. 1, 110, H1-6, col. 4 lines 41-48*), and the backup process is executed by the other processor (*backup for A application on multiple host computer, fig. 2, H2 and H3*).

In regard to claim 4, Chung et al. disclosed the system of claim 1, wherein the persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) provides the checkpoint data upon request by the backup process when the primary process fails (*Checkpoint server transmit last stored state to new primary application module, fig. 1, 110, H1-6, col. 4 lines 41-48*).

In regard to claim 5, Chung et al. disclosed the system of claim 1, wherein the persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) is configured to store multiple sets of checkpoint data sent from the processor at successive time intervals (*checkpoint technique to periodically take snapshots of the running state in a stable storage media, col. 1 lines 49-58*).

In regard to claim 6, Chung et al. disclosed the system of claim 5, wherein the persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) provides the multiple sets of checkpoint data upon request by the backup process at one time (*Replica-Manager stores*

information necessary to effect recovery of an entire host computer running several different application modules, fig. 2, 200, col. 5 lines 21-30).

In regard to claim 7, Chung et al. disclosed the system of claim 1, wherein the primary process (*primary for application A, fig. 2, 202*) provides the checkpoint data (*snapshot of the running state of the primary application, col. 1 lines 49-58*) to the persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) independently from the backup process (*backup for application A, fig. 2, 203-205*).

In regard to claim 8, Chung et al. disclosed the system of claim 1, wherein the persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) is configured as part of a remote direct memory access-enabled system area network (*Checkpoint Server is connected to network, fig. 1, 110, 100*).

In regard to claim 9, Chung et al. disclosed the system of claim 1, wherein the persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) is configured with address protection and translation tables to authenticate requests from remote processors (*host processor, fig. 2, 200, H1-H6*), and to provide access information to authenticated remote processors (*application module register itself for its own failure and recovery process, col. 3 lines 1-15*).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
3. Claims 10-13, 17-28, 32-33 and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung et al. (US 6,195,760) and in further view of Stiffler et al. (US 6,622,263).

In regard to claim 10, Chung et al. teach a method for recovering the operational state of a primary process, comprising:

a persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*);
receiving checkpoint data regarding the operational state of the primary process
(*periodically receives from each fault-protected application module running on the network the most current state of that application, col. 4 lines 41-44*) in the persistent memory unit
(*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*); and

providing the checkpoint data to a backup process via a direct memory read command from the backup process (*last operating state of the failed application module must be provided to the backup application module, col. 4 lines 34-40*).

Chung et al. does not teach the method of mapping virtual addresses to physical address.

Stiffler et al. disclosed the method of system-directed checkpointing without specialized hardware assistance with a memory map of virtual addresses to physical addresses (*col. 5 lines 2-8*).

It would have been obvious to modify the method of Chung et al. by adding Stiffler et al. method of system-directed checkpointing without specialized hardware assistance. A person of ordinary skill in the art at the time of applicant's invention would have been motivated to make the modification because it would established and record a consistent system state from which al running application can be safely resumed following a fault (*col. 1 lines 15-17*)

In regard to claim 11, Chung et al. disclosed the method of claim 10, further comprising: providing context information regarding the addresses to the primary process and the backup process.

It is inherent that the network of fig. 1 with the plurality of host computer H1-H6 if connected in an Ethernet network would have their own IP address to distinct one host computer from another (*col. 3 lines 60-67*). Furthermore, the registration request from each failure-protected application module included a list of the host computers on which

the application modules resided and where on each the executable program can be found
(col. 4 lines 49-60).

In regard to claim 12, Chung et al. disclosed the method of claim 10, further comprising:
providing the checkpoint data to the backup process upon failure of the primary process
(*Checkpoint server transmit last stored state to new primary application module, fig. 1, 110, H1-6, col. 4 lines 41-48*).

In regard to claim 13, Chung et al. disclosed the method of claim 10, further comprising:
overwriting the checkpoint data with current checkpoint data (*when a failure of the primary application, the checkpoint data of the last stored state of the failed primary is supplied to the backup application module, col. 1 lines 49-57*).

In regard to claim 17, Chung et al. disclosed the method of claim 10, further comprising:
storing access information (*Replica Manager's internal table, fig. 2, 200, col. 7 lines 45-49*) to the physical addresses of the checkpoint data (*ReplicaManager is made persistent by storing table in the Checkpoint Server, fig. 2, 110, 200, col. 8 lines 51-52*) in the persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) when the primary process opens a memory region for the checkpoint data; and

providing the access information to subsequent requestors of the checkpoint data
(*ReplicaManager daemon process has replication information for all registered application*

modules in the network, col. 5 lines 21-23, the pathname location of each copy of the application module on the host computer is shown, fig. 2, col. 5 lines 43-47).

In regard to claim 18 Chung et al. disclosed the method of claim 17, further comprising:
establishing a connection to a process requesting access to the checkpoint data
(*ReplicaManager daemon process, fig. 1, 112, col. 5 lines 21-23*); and
binding the access information to the connection (*registered application modules in the network, col. 5 lines 21-23*).

In regard to claim 19, Chung et al. does not teach the method of claim 17, further comprising:

verifying authentication information from the subsequent requestors.

Stiffler disclosed the method for achieving system-directed checkpointing without specialized hardware assistance by implementing an exception handler software to check the write permission information (*fig. 3, 302, col. 8 lines 9-18*).

Refer to claim 10 for motivational statement.

In regard to claim 20, Chung et al. disclosed the method of claim 10, further comprising:
authenticating a persistent memory manager (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) during initialization of address protection and translation tables (*table, fig. 2, 200, col. 7 lines 1-5*) on the persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*).

In regard to claim 21, Chung et al. disclosed a computer product, comprising:
computer executable instructions (*application modules, col. 4 lines 1-15*) operable to:
receive a direct memory access command from a remote processor via a network (*Checkpoint Server connected to the network periodically receives the most current state of each fault-protected application module stored in its memory, col. 4 lines 40-45*), wherein the direct memory access command includes a reference to a persistent memory (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*);

Chung et al. does not teach a computer product reference to a persistent memory virtual address; translate the virtual address to a physical address in the persistent memory unit; and receive checkpoint data from a primary process; and allow access to the checkpoint data for use in a backup process.

Stiffler et al. disclosed the apparatus for achieving system-directed checkpointing without specialized hardware assistance with the implementation of a memory map to convert virtual addresses used by application and by the operating system into physical addresses that point to specific locations in main memory. Each memory-map entry, in addition to containing virtual to physical address translation information, contains other information as well (*col. 5 lines 5-14*). Stiffler et al. also disclosed the method where each computer other than the standby sends checkpoint data to its neighbor on the right and each stores in its shadow memory (*col. 14 lines 40-46*), when a fault is detected, the computer to the right takes over the tasks that was executing prior to the fault (*col. 14 lines 47-55*).

Refer to claim 10 for motivational statement.

In regard to claim 22, Chung et al. disclosed the computer product of claim 21, further comprising: computer executable instructions operable to:

provide address context information to the processor (*pathname location of each copy of the application module on the host computer, fig. 2, 200*).

In regard to claim 23, Chung et al. disclosed the computer product of claim 21, further comprising: computer executable instructions operable to:

store multiple updates to the checkpoint data sent at successive time intervals (*checkpoint technique to periodically take snapshots of the running state in a stable storage media, col. 1 lines 49-58*).

In regard to claim 24, Chung et al. disclosed the computer product of claim 21, further comprising: computer executable instructions operable to:

provides the multiple sets of checkpoint data to the backup process at one time (*Replica-Manager stores information necessary to effect recovery of an entire host computer running several different application modules, fig. 2, 200, col. 5 lines 21-30*).

In regard to claim 25, Chung et al. disclosed the computer product of claim 21, wherein the persistent memory (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) is configured as part of a remote direct memory access-enabled system area network (*Checkpoint Server is connected to*

network, fig. 1, 110, 100).

In regard to claim 26, Chung et al. teach an apparatus comprising:

means for communicatively coupling (*configuring a fail-over process, col. 1 lines 36-37*) a persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) to a network (*network, fig. 1, 110, col. 4 lines 41-44*) that enables direct access to the persistent memory unit (*A checkpoint Server connected to network periodically receives from each fault-protected application module running on the network, col. 4 lines 41-44*);

means for receiving checkpoint data for a primary process (*periodically receives from each fault-protected application module running on the network the most current state of that application, col. 4 lines 41-44*) in the persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) via the network (*network, fig. 1, 110, col. 4 lines 41-44*); and

means for providing the checkpoint data to a backup process (*last operating state of the failed application module must be provided to the backup application module, col. 4 lines 34-40*) via the network (*Checkpoint Server connected to network to receives from each fault-protected .*

Chung et al. does not teach the means for mapping virtual addresses of the persistent memory unit to physical addresses of the persistent memory unit;

Stiffler et al. disclosed the method of system-directed checkpointing without specialized hardware assistance with a memory map of virtual addresses to physical addresses (*col. 5 lines 2-8*).

Refer to claim 10 for motivational statement.

In regard to claim 27, Chung et al. disclosed the apparatus of claim 26, further comprising: means for providing context information regarding the addresses to the primary process and the backup process (*pathname location of each copy of the application module on the host computer, fig. 2, 200*).

In regard to claim 28, Chung et al. disclosed the apparatus of claim 26, further comprising: means for providing the checkpoint data to the backup process upon failure of the primary process (*Checkpoint server transmit last stored state to new primary application module, fig. 1, 110, H1-6, col. 4 lines 41-48*).

In regard to claim 32, Chung et al. disclosed a method for recording the operational state of a primary process, comprising: transmitting checkpoint data (*periodically receives from each fault-protected application module running on the network the most current state of that application, col. 4 lines 41-44*) regarding the operational state of the primary process (*WatchDog periodically polls application module and reports any failure to the ReplicaManager, col. 7 lines 42-49*) in the persistent memory unit (*Checkpoint Server, fig. 1, 110, col. 4 lines 41-44*) via a direct memory access write command (*last stored state is retrieved from the memory of Checkpoint Server connected to network, fig. 1, 110, 100, col. 4 lines 41-48*).

In regard to claim 33, Chung et al. disclosed the method of claim 32, further comprising: overwriting the checkpoint data in the persistent memory unit with current checkpoint data via a direct memory access write command (*when a failure of the primary application, the checkpoint*

data of the last stored state of the failed primary is supplied to the backup application module, col. 1 lines 49-57).

In regard to claim 35, Chung et al. disclosed a method for retrieving the operational state of a primary process, comprising: transmitting a direct memory access read command via network to a remote persistent memory unit from a backup process for the primary process (*the last stored state of that failed application module is retrieved from the memory of Checkpoint Server and provided to the new primary application module for continued processing, col. 4 lines 44-48).*

In regard to claim 36, Chung et al. disclosed the method of claim 35, further comprising: periodically transmitting the direct memory access read command to retrieve at least a portion of the checkpoint data for the backup process (*Checkpoint Server periodically receives from each fault-protected application module running on the network the most current state of that application, col. 4 lines 41-44).*

In regard to claim 37, Chung et al. disclosed the method of claim 35, further comprising: transmitting the direct memory access read command to retrieve previously unread portions of the checkpoint data upon failure of the primary process (*Checkpoint server transmit last stored state to new primary application module, fig. 1, 110, H1-6, col. 4 lines 41-48).*

4. Claims 14-16, 29-31 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chung et al. (US 6,195,760) and in further view of Stiffler et al. (US 6,622,263) in further view of St. Pierre et al. (US 6,141,773).

In regard to claim 14, Chung et al. and Stiffler et al. does not teach the method of claim 10, further comprising: appending updated checkpoint data to at least one previous set of the checkpoint data.

St. Pierre et al. disclosed the method of backing up and restoring data in a computer storage system where differential backup is formed by the identified changed segments omitting at least on the segments that has not been changed (*col. 5 lines 30-63*).

It would have been obvious to modify the method of Chung et al. and Stiffler et al. by adding St. Pierre et al. method of backing up data in a computer storage system (*col. 5 lines 30-63*). A person of ordinary skill in the art at the time of applicant's invention would have been motivated to make the modification because it would permits recovery from errors, including use of a mirror for data located at a remote facility, that also permits recoveries from catastrophic failure (*col. 5 lines 25-28*).

In regard to claim 15, Chung et al. disclosed the method of claim 14, further comprising:

periodically supplying at least a portion of the multiple sets of checkpoint data in the backup process (*warm backup style, one or more backup application modules run*

simultaneously with the primary application module and periodically receive state updates from the primary application module, col. 1 lines 59-67); and

clearing the portion of the multiple sets of checkpoint data (periodically receives state updates from the primary application module, col. 1 lines 64-67).

In regard to claim 16, Chung et al. disclosed the method of claim 15, further comprising:
providing previously unread portions of the checkpoint data to the backup process upon failure of the primary process (*Checkpoint server transmit last stored state to new primary application module, fig. 1, 110, H1-6, col. 4 lines 41-48*); and

resuming functions performed by the primary process with the backup process (checkpoint data of the last stored state of the failed primary application module is supplied to the backup application module, col. 1 lines 52-58).

In regard to claim 29, Chung et al. teach the apparatus of claim 26, further comprising:
means for overwriting the checkpoint data with current checkpoint data (*when a failure of the primary application, the checkpoint data of the last stored state of the failed primary is supplied to the backup application module, col. 1 lines 49-57*).

Chung et al. and Stiffler et al. does not teach the means for creating multiple sets of checkpoint data by appending updated checkpoint data to at least one previous set of the checkpoint data;

St. Pierre et al. disclosed the method of backing up and restoring data in a computer storage system where differential backup is formed by the identified changed segments omitting at least on the segments that has not been changed (*col. 5 lines 30-63*).

Refer to claim 14 for motivational statement.

In regard to claim 30, Chung et al. disclosed the apparatus of claim 29, further comprising: means for periodically supplying (*Checkpoint server periodically receives from each fault-protected application module running on the network, fig. 1, col. 4 lines 41-44*) at least a portion of the multiple sets of checkpoint data (*snapshot of the running state of the primary application, col. 1 lines 49-58*) in the backup process (*Replica-Manager stores information necessary to effect recovery of an entire host computer running several different application modules, fig. 2, 200, col. 5 lines 21-30*).

In regard to claim 31, Chung et al. disclosed the apparatus of claim 30, further comprising: means for providing previously unread portions of the checkpoint data to the backup process upon failure of the primary process (*upon failure detection of an application module, the last stored state of the failed application is retrieved form the memory of Checkpoint Server, col. 4 lines 45-48*).

In regard to claim 34, Chung et al. and Stiffler et al. teach the method of claim 32, further comprising: appending updated checkpoint data to a previous set of the checkpoint data via a direct memory access write command.

St. Pierre et al. disclosed the method of backing up and restoring data in a computer storage system where differential backup is formed by the identified changed segments omitting at least on the segments that has not been changed (*col. 5 lines 30-63*).

Refer to claim 14 for motivational statement.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Loan Truong whose telephone number is (571) 272-2572. The examiner can normally be reached on M-F from 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Loan Truong
Patent Examiner

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A handwritten signature in black ink, appearing to read 'SB', with a long horizontal flourish extending to the right.

**SCOTT BADERMAN
SUPERVISORY PATENT EXAMINER**